

# HOUSE BILL No. 1340

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 24-4.5.

**Synopsis:** Long term small loans. Provides that a lender that is licensed by the department of financial institutions to engage in small loans may enter into a transaction for a long term small loan with a borrower. Defines a long term small loan as a loan that: (1) is entered into by a licensed small loan lender and a borrower; (2) has a principal amount of at least \$550 and not more than \$2,000; and (3) is payable in installments over a term of at least 12 months. Provides that with respect to a long term small loan, a lender may contract for and receive a monthly loan finance charge that: (1) does not exceed 20% of the principal at origination; and (2) is earned by the lender on a daily basis using the simple interest method. Sets forth certain requirements and prohibitions with respect to long term small loans.

**Effective:** July 1, 2016.

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January 12, 2016, read first time and referred to Committee on Financial Institutions.

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Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

## HOUSE BILL No. 1340

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1       SECTION 1. IC 24-4.5-3-502, AS AMENDED BY P.L.186-2015,  
2       SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       JULY 1, 2016]: Sec. 502. (1) A person that is a:  
4               (a) depository institution;  
5               (b) subsidiary that is owned and controlled by a depository  
6               institution and regulated by a federal banking agency; or  
7               (c) credit union service organization;  
8       may engage in Indiana in the making of consumer loans (including  
9       small loans **and long term small loans** that are subject to IC 24-4.5-7)  
10      that are not mortgage transactions without obtaining a license under  
11      this article.  
12      (2) A collection agency licensed under IC 25-11-1 may engage in:  
13               (a) taking assignments of consumer loans (including small loans  
14               **and long term small loans** that are subject to IC 24-4.5-7) that  
15               are not mortgage transactions; and  
16               (b) undertaking the direct collection of payments from or the  
17               enforcement of rights against debtors arising from consumer loans



(including small loans **and long term small loans** that are subject to IC 24-4.5-7) that are not mortgage transactions; in Indiana without obtaining a license under this article.

(3) A person that does not qualify under subsection (1) or (2) shall acquire and retain a license under this chapter in order to regularly engage in Indiana in the following actions with respect to consumer loans that are not small loans **or long term small loans** (as defined in ~~IC 24-4.5-7-104~~) **IC 24-4.5-7**) or mortgage transactions:

(a) The making of consumer loans.

(b) Taking assignments of consumer loans.

(c) Undertaking the direct collection of payments from or the enforcement of rights against debtors arising from consumer loans.

(4) A separate license under this chapter is required for each legal entity that engages in Indiana in any activity described in subsection (3). However, a separate license under this chapter is not required for each branch of a legal entity licensed under this chapter to perform an activity described in subsection (3).

(5) Except as otherwise provided in subsections (1) and (2), a separate license under IC 24-4.5-7 is required in order to regularly engage in Indiana in the following actions with respect to small loans **or long term small loans** (as defined in ~~IC 24-4.5-7-104~~): **IC 24-4.5-7**):

(a) The making of small loans **or long term small loans** (as defined in ~~IC 24-4.5-7-104~~): **IC 24-4.5-7**).

(b) Taking assignments of small loans **or long term small loans** (as defined in ~~IC 24-4.5-7-104~~): **IC 24-4.5-7**).

(c) Undertaking the direct collection of payments from or the enforcement of rights against debtors arising from small loans **or long term small loans** (as defined in ~~IC 24-4.5-7-104~~): **IC 24-4.5-7**).

A person that seeks licensure under IC 24-4.5-7 in order to regularly engage in Indiana in the actions set forth in this subsection shall apply to the department for that license in the form and manner prescribed by the department, and is subject to the same licensure requirements and procedures as an applicant for a license to make consumer loans (other than small loans **or long term small loans** or mortgage transactions) under this section.

SECTION 2. IC 24-4.5-7-102, AS AMENDED BY P.L.186-2015, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 102. (1) Except as otherwise provided, all provisions of this article applying to consumer loans, including



IC 24-4.5-3-502.2, apply to small loans **and long term small loans, both** as defined in this chapter.

(2) Subject to subsection (7), a person may not regularly engage in Indiana in any of the following actions unless the department first issues to the person a license under this chapter:

- (a) The making of small loans **or long term small loans.**
- (b) Taking assignments of small loans **or long term small loans.**
- (c) Undertaking the direct collection of payments from or the enforcement of rights against debtors arising from small loans **or long term small loans.**

(3) Subject to subsection (4), a person that seeks licensure under this chapter:

- (a) shall apply to the department for a license in the form and manner prescribed by the department; and
- (b) is subject to the same licensure requirements and procedures as an applicant for a license to make consumer loans (other than mortgage transactions) under IC 24-4.5-3-502.

(4) A person that seeks to make, take assignments of, or undertake the direct collection of payments from or the enforcement of rights against debtors arising from both:

- (a) small loans **or long term small loans** under this chapter; and
- (b) consumer loans (other than mortgage transactions) that are not small loans **or long term small loans;**

must obtain ~~a separate license~~ **licenses** from the department for ~~each type of loan; the loans described in subdivision (a) and for the loans described in subdivision (b),~~ as described in IC 24-4.5-3-502(5). **A person is not required to obtain separate licenses under this chapter with respect to small loans and long term small loans. A person who is issued and maintains in good standing a license under this chapter to engage in any of the activities described in this subsection with respect to small loans is also authorized to engage in those activities with respect to long term small loans, regardless of when the license is issued, including a license issued under this chapter before July 1, 2016.**

(5) This chapter applies to:

- (a) a lender or to any person who facilitates, enables, or acts as a conduit for any person who is or may be exempt from licensing under IC 24-4.5-3-502;
- (b) a bank, savings association, credit union, or other state or federally regulated financial institution except those that are specifically exempt regarding limitations on interest rates and fees; or



- (c) a person, if the department determines that a transaction is:
- (i) in substance a disguised loan; or
  - (ii) the application of subterfuge for the purpose of avoiding this chapter.

(6) A loan that:

- (a) does not qualify as a small loan under section 104 of this chapter **or a long term small loan under section 104.2 of this chapter;**

- (b) is for a term shorter than that specified in:

- (i) section 401(1) of this chapter, **in the case of a small loan;**

or

- (ii) **section 401.2, in the case of a long term small loan; or**

- (c) is made in violation of section 201, **201.2**, 401, **401.2**, 402, 404, or 410 of this chapter, **as applicable;**

is subject to this article. The department may conform the finance charge for a loan described in this subsection to the limitations set forth in IC 24-4.5-3-508.

(7) Notwithstanding IC 24-4.5-1-301.5, for purposes of subsection (2), a person "regularly engages" in any of the activities described in subsection (2) with respect to a small loan **or long term small loan** if the person:

- (a) performed any of the activities described in subsection (2) with respect to a small loan **or long term small loan** at least one

- (1) time in the preceding calendar year; or

- (b) performs or will perform any of the activities described in subsection (2) with respect to a small loan **or long term small loan** at least one (1) time in the current calendar year if the person did not perform any of the activities described in subsection (2) with respect to a small loan **or long term small loan** at least one (1) time in the preceding calendar year.

SECTION 3. IC 24-4.5-7-103, AS AMENDED BY P.L.57-2006, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 103. The following definitions apply to this chapter:

"Small loan"	Section 7-104
<b>"Long term small loan"</b>	<b>Section 7-104.2</b>
"Principal"	Section 7-105
"Check"	Section 7-106
"Renewal"	Section 7-107
"Consecutive small loan"	Section 7-108
"Paid in full"	Section 7-109
"Monthly gross income"	Section 7-110



"Lender"

Section 7-111

SECTION 4. IC 24-4.5-7-104.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 104.2. (1) "Long term small loan" means a loan:**

**(a) that is entered into by:**

**(i) a lender that acquires and retains a license issued by the department under this chapter; and**

**(ii) a borrower;**

**(b) that has a principal loan amount that is at least five hundred fifty dollars (\$550) and not more than two thousand dollars (\$2,000);**

**(c) that is payable in installments over a term of at least twelve (12) months; and**

**(d) in which the lender may obtain the borrower's written authorization to debit the borrower's account (whether for scheduled automatic payments or, subject to sections 406 and 406.2 of this chapter, as a result of default) under an agreement between the borrower and lender and in compliance with the requirements of Regulation E (12 CFR 1005.1 et seq.).**

**(2) The amount of two thousand dollars (\$2,000) in subsection (1)(b) is subject to change under the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the Reference Base Index to be used under this subsection is the Index for October 2006.**

SECTION 5. IC 24-4.5-7-107 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 107. (1) "Renewal", refers to a small loan that takes the place of with respect to an existing small loan, by: means (a) renewing, (b) repaying, (c) refinancing, or (d) consolidating a the existing small loan with the proceeds of another small loan, or with the proceeds of a long term small loan, made to the same borrower by a lender.**

**(2) "Renewal", with respect to an existing long term small loan, means renewing, repaying, refinancing, or consolidating the existing long term small loan with the proceeds of:**

**(a) another long term small loan; or**

**(b) a small loan;**

**made to the same borrower by a lender.**

SECTION 6. IC 24-4.5-7-109, AS AMENDED BY P.L.57-2006, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 109. "Paid in full" means the termination of:**



(a) a small loan through:

(1) (i) the presentment of the borrower's check for payment by the drawee bank or the exercise by the lender of an authorization to debit an account of the borrower; or

(2) (ii) the return of a check to a borrower who redeems it for consideration; or

(b) a long term small loan through the payment in full of the balance of the long term small loan by the borrower.

SECTION 7. IC 24-4.5-7-110.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 110.2. "Annual gross income", with respect to a borrower in a long term small loan, means the income received by the borrower in the twelve (12) month period preceding the borrower's application for the long term small loan, exclusive of any income other than regular gross pay received, or as otherwise determined by the department.**

SECTION 8. IC 24-4.5-7-111, AS AMENDED BY P.L.186-2015, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 111. "Lender" means a person that acquires and retains a license issued by the department of financial institutions under this chapter to engage in small loans and long term small loans.**

SECTION 9. IC 24-4.5-7-201.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 201.2. With respect to a long term small loan, a lender may contract for and receive a monthly loan finance charge that:**

(a) does not exceed twenty percent (20%) of the principal at origination; and

(b) is earned by the lender on a daily basis using the simple interest method.

SECTION 10. IC 24-4.5-7-202, AS AMENDED BY P.L.90-2008, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 202. (1) Except as provided in section 202.2 of this section with respect to a long term small loan, and notwithstanding any other law, the only fee that may be contracted for and received by the lender or an assignee on a small loan or a long term small loan is a charge, not to exceed twenty-five dollars (\$25), for each:**

(a) return by a bank or other depository institution of a:

(i) dishonored check;

(ii) negotiable order of withdrawal; or

(iii) share draft;



1 issued by the borrower; or

2 (b) time an authorization to debit the borrower's account is  
3 dishonored.

4 This additional charge may be assessed one (1) time regardless of how  
5 many times a check or an authorization to debit the borrower's account  
6 may be submitted by the lender and dishonored.

7 (2) A lender may:

8 (a) present a borrower's check for payment; or

9 (b) exercise a borrower's authorization to debit the borrower's  
10 account;

11 not more than three (3) times.

12 SECTION 11. IC 24-4.5-7-202.2 IS ADDED TO THE INDIANA  
13 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
14 [EFFECTIVE JULY 1, 2016]: **Sec. 202.2. (1) With respect to a long**  
15 **term small loan, the lender and the borrower may contract for a**  
16 **delinquency charge of not more than five dollars (\$5) on any**  
17 **installment or minimum payment that is due and not paid in full**  
18 **within ten (10) days after its scheduled due date.**

19 (2) A delinquency charge under this section may be collected  
20 only once on an installment however long it remains delinquent. A  
21 delinquency charge may be collected any time after it accrues.

22 (3) A delinquency charge may not be collected on an installment  
23 or payment due that is paid in full within ten (10) days after its  
24 scheduled due date even though an earlier maturing installment,  
25 minimum payment, or a delinquency charge on:

26 (a) an earlier installment; or

27 (b) payment due;

28 may not have been paid in full. For purposes of this subsection,  
29 payments are applied first to current installments or payments due  
30 and then to delinquent installments or payments due.

31 (4) The amount of five dollars (\$5) in subsection (1) is subject to  
32 change under IC 24-4.5-1-106.

33 (5) If the parties provide by contract for a delinquency charge  
34 that is subject to change, the lender shall disclose in the contract  
35 that the amount of the delinquency charge is subject to change as  
36 allowed by IC 24-4.5-1-106.

37 SECTION 12. IC 24-4.5-7-301, AS AMENDED BY P.L.35-2010,  
38 SECTION 83, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
39 JULY 1, 2016]: Sec. 301. (1) For purposes of this section, the lender  
40 shall disclose to the borrower to whom credit is extended with respect  
41 to a small loan **or a long term small loan** the information required by  
42 the Federal Consumer Credit Protection Act.





(2) **With respect to small loans**, in addition to the requirements of subsection (1), the lender must conspicuously display in bold type a notice to the public both in the lending area of each business location and in the loan documents the following statement:

"WARNING: A small loan is not intended to meet long term financial needs. A small loan should be used only to meet short term cash needs. The cost of your small loan may be higher than loans offered by other lending institutions. Small loans are regulated by the State of Indiana Department of Financial Institutions.

A borrower may rescind a small loan without cost by paying the cash amount of the principal of the small loan to the lender not later than the end of the business day immediately following the day on which the small loan was made."

(3) **With respect to long term small loans, in addition to the requirements of subsection (1), the lender must conspicuously display in bold type a notice to the public both in the lending area of each business location and in the loan documents the following statement:**

**"WARNING: The cost of your long term small loan may be higher than loans offered by other lending institutions. Long term small loans are regulated by the State of Indiana Department of Financial Institutions.**

**A borrower may rescind a long term small loan without cost by paying the cash amount of the principal of the long term small loan to the lender not later than the end of the business day immediately following the day on which the long term small loan was made."**

~~(3)~~ (4) The statement required **in under** subsection (2) **or** (3) must be in:

- (a) 14 point bold face type in the loan documents; and
- (b) not less than one (1) inch bold print in the lending area of the business location.

~~(4)~~ (5) When a borrower enters into a small loan **or a long term small loan**, the lender shall provide the borrower with a pamphlet approved by the department that describes:

- (a) the availability of debt management and credit counseling services; and
- (b) the borrower's rights and responsibilities in the transaction.

SECTION 13. IC 24-4.5-7-401.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 401.2. A long term small loan**



1 **may not be made for a term of less than twelve (12) months.**

2 SECTION 14. IC 24-4.5-7-402, AS AMENDED BY P.L.27-2012,  
3 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4 JULY 1, 2016]: Sec. 402. (1) A lender is prohibited from making:

5 **(a) a small loan to a borrower if the total of:**

6 **(a) (i) the principal amount and finance charges of the small**  
7 **loan to be issued; plus**

8 **(b) (ii) any other small loan balances that the borrower has**  
9 **outstanding with any lender;**

10 **exceeds twenty percent (20%) of the borrower's monthly gross**  
11 **income; and**

12 **(b) a long term small loan to a borrower if the total of:**

13 **(i) the principal amount and finance charges of the long**  
14 **term small loan to be issued; plus**

15 **(ii) any other long term small loan balances that the**  
16 **borrower has outstanding with any lender;**

17 **exceeds ten percent (10%) of the borrower's annual gross**  
18 **income.**

19 (2) A small loan may be secured by only one (1) check or  
20 authorization to debit the borrower's account per small loan. The check  
21 or electronic debit may not exceed the amount advanced to or on behalf  
22 of the borrower plus loan finance charges contracted for and permitted.

23 (3) A borrower may make partial payments in any amount on ~~the a~~  
24 **small loan or a long term small loan** without charge at any time  
25 before the due date of the small loan **or long term small loan.**

26 (4) After any payment is made on a small loan **or a long term small**  
27 **loan** whether the payment is made in part or in full before, on, or after  
28 the due date of the small loan **or long term small loan, as applicable,**  
29 the lender shall give a signed and dated receipt to the borrower making  
30 a payment showing the amount paid and the balance due on the small  
31 loan **or long term small loan.**

32 (5) The lender shall provide to each borrower a copy of the required  
33 **small loan or long term small loan** documents before the  
34 disbursement of the loan proceeds.

35 (6) A borrower may rescind a small loan **or a long term small loan**  
36 without cost by paying the cash amount of the principal of the small  
37 loan **or long term small loan, as applicable,** to the lender not later  
38 than the end of the business day immediately following the day on  
39 which the small loan **or long term small loan** was made.

40 (7) A lender shall not enter into a renewal **of an existing small loan**  
41 with a borrower. If a **small loan** is paid in full, a subsequent **small loan**  
42 **or long term small loan** is not a renewal.



1       (8) The following apply with respect to a long term small loan  
2 only:

3       (a) With respect to an existing long term small loan, a lender  
4 shall not enter into:

5           (i) a renewal described in section 107(2)(b) of this  
6 chapter with a borrower; or

7           (ii) more than two (2) renewals described in section  
8 107(2)(a) of this chapter with a borrower.

9       If a long term small loan is paid in full, a subsequent long  
10 term small loan or small loan is not a renewal.

11       (b) All payments on a long term small loan are due in  
12 substantially equal and consecutive installments, subject to  
13 any differentiations that the lender may reasonably establish  
14 with respect to the first payment due.

15       (c) Payments on a long term small loan may be made with  
16 cash or other immediately available funds or, with the  
17 borrower's voluntary authorization, through an electronic  
18 debit of a deposit account of the borrower.

19       SECTION 15. IC 24-4.5-7-403 IS AMENDED TO READ AS  
20 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 403. A long term  
21 small loan may not be secured by personal property. A small loan  
22 may not be secured by personal property other than a check or  
23 electronic debit.

24       SECTION 16. IC 24-4.5-7-404, AS AMENDED BY P.L.35-2010,  
25 SECTION 85, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
26 JULY 1, 2016]: Sec. 404. (1) As used in this section, "commercially  
27 reasonable method of verification" means a private consumer credit  
28 reporting service that the department determines to be capable of  
29 providing a lender with adequate verification information necessary to  
30 ensure compliance with subsection (4).

31       (2) With respect to a small loan, ~~no~~ a lender may **not** permit a  
32 person to become obligated under more than one (1) loan agreement  
33 **under this chapter** with the lender at any time, **including an**  
34 **agreement with the lender for a long term small loan. With respect**  
35 **to a long term small loan, a lender may not permit a person to**  
36 **become obligated under more than one (1) loan agreement under**  
37 **this chapter with the lender at any time, including an agreement**  
38 **with the lender for a small loan.**

39       (3) A lender shall not make a small loan that, when combined with  
40 the outstanding balance on another outstanding small loan owed to  
41 another lender, exceeds a total of five hundred fifty dollars (\$550),  
42 excluding finance charges. **A lender shall not make a long term**



1 **small loan that, when combined with the outstanding balance on**  
 2 **another outstanding long term small loan owed to another lender,**  
 3 **exceeds a total of two thousand five hundred dollars (\$2,500),**  
 4 **excluding finance charges.** A lender shall not make a ~~small~~ loan  
 5 **under this chapter (whether the loan is a small loan or a long term**  
 6 **small loan)** to a borrower who has two (2) or more ~~small~~ loans **under**  
 7 **this chapter** outstanding, regardless of the total value of the ~~small~~  
 8 loans. The ~~amount~~ **amounts** of five hundred fifty dollars (\$550) **and**  
 9 **two thousand five hundred dollars (\$2,500)** in this subsection **is are**  
 10 subject to change under the provisions on adjustment of dollar amounts  
 11 (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the  
 12 Reference Base Index to be used under this subsection is the Index for  
 13 October 2006.

14 (4) A lender complies with subsection (3) if the lender  
 15 independently verifies the total number of outstanding ~~small~~ loans  
 16 **under this chapter** and the total outstanding balance of those ~~small~~  
 17 loans for a customer through a commercially reasonable method of  
 18 verification. A lender's method of verifying whether a borrower has any  
 19 outstanding ~~small~~ loans **under this chapter** and the total outstanding  
 20 balance of any loans will be considered commercially reasonable if the  
 21 method includes a manual investigation or an electronic query of:

22 (a) the lender's own records, including both records maintained at  
 23 the location where the borrower is applying for the transaction  
 24 and records maintained at other locations within the state that are  
 25 owned and operated by the lender; and

26 (b) an available third party data base provided by a private  
 27 consumer reporting service, subject to the identification  
 28 verification requirements set forth in subsection (12).

29 (5) The department shall monitor the effectiveness of private  
 30 consumer credit reporting services in providing the verification  
 31 information required under subsection (4). If the department  
 32 determines that a commercially reasonable method of verification is  
 33 available, the department shall:

34 (a) provide reasonable notice to all lenders identifying the  
 35 commercially reasonable method of verification that is available;  
 36 and

37 (b) require each lender to use, consistent with the policies of the  
 38 department, the identified commercially reasonable method of  
 39 verification as a means of complying with subsection (4).

40 (6) If a borrower presents evidence to a lender that a loan has been  
 41 discharged in bankruptcy, the lender shall cause the record of the  
 42 borrower's loan to be updated in the data base described in subsection



(4)(b) to reflect the bankruptcy discharge.

(7) A lender shall cause the record of a borrower's loan to be updated in the data base described in subsection (4)(b) to reflect:

(a) ~~the~~ presentment of the borrower's check for payment or ~~(b) the~~ exercise of the borrower's authorization to debit the borrower's account, **in the case of a small loan; or**

**(b) a payment in accordance with one (1) of the methods set forth in section 402(8)(c) of this chapter, in the case of a long term small loan.**

If a check is returned or an authorization is dishonored because of insufficient funds in the borrower's account, the lender shall reenter the record of the loan in the data base.

(8) A lender shall update information in a data base described in subsection (4)(b) to reflect partial payments made on an outstanding loan, the record of which is maintained in the data base.

(9) If a lender ceases doing business in Indiana, the director may require the operator of the data base described in subsection (4)(b) to remove records of the lender's loans from the operator's data base.

(10) The director may impose a civil penalty not to exceed one hundred dollars (\$100) for each violation of:

(a) this section; or

(b) any rule or policy adopted by the director to implement this section.

(11) The excess amount of loan finance charge provided for in agreements in violation of this section is an excess charge for purposes of the provisions concerning effect of violations on rights of parties (IC 24-4.5-5-202) and the provisions concerning civil actions by the department (IC 24-4.5-6-113).

(12) If a borrower provides the borrower's Social Security number to a lender in connection with any transaction or proposed transaction under this chapter, the lender shall:

(a) maintain procedures to verify that the Social Security number provided is legitimate and belongs to the borrower; and

(b) retain copies of any documents used to verify the borrower's Social Security number. Documentation under this subdivision may be in electronic form, and the numbers may be truncated.

If a borrower does not have a Social Security number, the lender may require and accept another valid form of government issued identification, subject to the requirements of subdivisions (a) and (b) with respect to the government issued identification accepted.

SECTION 17. IC 24-4.5-7-405 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 405. (1) This section



1 does not apply to a business that is licensed by the department for a  
 2 purpose other than consumer loans.

3 (2) A lender shall not conduct the business of making small loans  
 4 **or long term small loans** under this chapter within an office, suite,  
 5 room, or place of business where another business is solicited or  
 6 engaged unless the lender obtains a written opinion from the director  
 7 of the department that the other business would not be contrary to the  
 8 best interests of consumers.

9 SECTION 18. IC 24-4.5-7-406, AS AMENDED BY P.L.90-2008,  
 10 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 11 JULY 1, 2016]: Sec. 406. (1) An agreement with respect to a small loan  
 12 **or a long term small loan** may not provide for charges as a result of  
 13 default by the borrower other than those specifically authorized by this  
 14 chapter. A provision in a small loan agreement **or a long term small**  
 15 **loan agreement** in violation of this section is unenforceable.

16 (2) A lender or an assignee of a small loan **or a long term small**  
 17 **loan** may seek only the following remedies upon default by a borrower:

18 (a) Recovery of:

19 (i) the contracted principal amount ~~of the loan~~ and ~~(ii)~~ the loan  
 20 finance charge, **in the case of a small loan; or**

21 **(ii) the contracted and outstanding principal amount and**  
 22 **any accrued and unpaid loan finance charge, in the case of**  
 23 **a long term small loan.**

24 (b) Collection of a fee for:

25 (i) a returned check, negotiable order of withdrawal, or share  
 26 draft; or

27 (ii) a dishonored authorization to debit the borrower's account;  
 28 if contracted for under section 202 of this chapter.

29 (c) Collection of postjudgment interest, if awarded by a court.

30 (d) Collection of court costs, if awarded by a court.

31 (3) A lender or an assignee of a small loan **or a long term small**  
 32 **loan** may not seek any of the following damages or remedies upon  
 33 default by a borrower:

34 (a) **Except as provided in section 406.2 of this chapter with**  
 35 **respect to a long term small loan**, payment of the lender's  
 36 attorney's fees.

37 (b) Treble damages.

38 (c) Prejudgment interest.

39 (d) Damages allowed for dishonored checks under any statute  
 40 other than this chapter.

41 (e) Any damages or remedies **that are** not set forth in subsection  
 42 **(2) or that are not otherwise permitted under this chapter.**



(4) A contractual agreement in a small loan transaction **or a long term small loan transaction** must include a notice of the following in 14 point bold type:

(a) The remedies available to a lender or an assignee under subsection (2).

(b) The remedies and damages that a lender or an assignee is prohibited **under subsection (3)** from seeking in a small loan transaction ~~under subsection (3)~~ **or a long term small loan transaction, as applicable.**

SECTION 19. IC 24-4.5-7-406.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 406.2. An agreement with respect to a long term small loan may provide that upon the borrower's default, as defined in the terms of the agreement, the lender may recover from the borrower the lender's attorney's fees if:**

(a) the fees are not paid to a salaried employee of:

(i) the lender; or

(ii) an affiliate of the lender; and

(b) the amount of the fees payable by the borrower does not exceed fifteen percent (15%) of the contracted and outstanding principal amount of the borrower's long term small loan at the time of default.

**A provision in a long term small loan agreement in violation of this section is unenforceable.**

SECTION 20. IC 24-4.5-7-409, AS AMENDED BY P.L.90-2008, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 409. (1) This section applies to licensees and unlicensed persons.

(2) A person who violates this chapter:

(a) is subject to the remedies provided in IC 24-4.5-5-202;

(b) commits a deceptive act under IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5;

(c) has no right to collect, receive, or retain any principal, interest, or other charges from a small loan **or a long term small loan**; however, this subdivision does not apply if the violation is the result of an accident or bona fide error of computation; and

(d) is liable to the borrower for actual damages, statutory damages of two thousand dollars (\$2,000) per violation, costs, and attorney's fees; however, this subdivision does not apply if the violation is the result of an accident or bona fide error of computation.

The remedies described in this subsection are in addition to all other



remedies set forth in this article.

(3) The department may sue:

(a) to enjoin any conduct that constitutes or will constitute a violation of this chapter; and

(b) for other equitable relief.

(4) The remedies provided in this section are cumulative but are not intended to be the exclusive remedies available to a borrower. A borrower is not required to exhaust any administrative remedies under this section or any other applicable law.

SECTION 21. IC 24-4.5-7-410, AS AMENDED BY P.L.90-2008, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 410. A lender making small loans **or long term small loans**, or an assignee of a small loan **or of a long term small loan**, shall not commit ~~nor~~ **or** cause to be committed any of the following acts:

(a) Threatening to use or using the criminal process in any state to collect on a small loan **or on a long term small loan**.

(b) Threatening to take action against a borrower that is prohibited by this chapter.

(c) Making a misleading or deceptive statement regarding a small loan **or a long term small loan** or **concerning** a consequence of taking a small loan **or a long term small loan**.

(d) **Except as provided in section 406.2 of this chapter with respect to long term small loans**, contracting for or collecting attorney's fees on small loans **or long term small loans** made under this chapter.

(e) Altering the date or any other information on a check or an authorization to debit the borrower's account held as security, **in the case of a small loan**.

(f) Using a device or agreement that the department determines would have the effect of charging or collecting more fees, charges, or interest than allowed by this chapter, including, but not limited to:

(i) entering a different type of transaction with the borrower;

(ii) entering into a sales/leaseback arrangement;

(iii) catalog sales;

(iv) entering into transactions in which a customer receives a purported cash rebate that is advanced by someone offering Internet content services, or some other product or service, when the cash rebate does not represent a discount or an adjustment of the purchase price for the product or service; or

(v) entering any other transaction with the borrower that is





- 1 designed to evade the applicability of this chapter.
- 2 (g) Engaging in unfair, deceptive, or fraudulent practices in the
- 3 making or collecting of a small loan **or a long term small loan.**
- 4 (h) Charging to cash a check representing the proceeds of a small
- 5 loan.
- 6 (i) Except as ~~otherwise~~ provided in **section 402(8)(a)(ii) of this**
- 7 **chapter:**
- 8 (i) accepting the proceeds of a ~~new small~~ loan **under this**
- 9 **chapter** as payment of an existing ~~small~~ loan **under this**
- 10 **chapter** provided by the same lender; or
- 11 (ii) renewing, refinancing, or consolidating a ~~small~~ loan **under**
- 12 **this chapter** with the proceeds of another ~~small~~ loan **under**
- 13 **this chapter** made by the same lender.
- 14 (j) Including any of the following provisions in a loan document:
- 15 (i) A hold harmless clause.
- 16 (ii) A confession of judgment clause.
- 17 (iii) A mandatory arbitration clause, unless the terms and
- 18 conditions of the arbitration have been approved by the
- 19 director of the department.
- 20 (iv) An assignment of or order for payment of wages or other
- 21 compensation for services.
- 22 (v) A provision in which the borrower agrees not to assert a
- 23 claim or defense arising out of contract.
- 24 (vi) A waiver of any provision of this chapter.
- 25 (k) Selling insurance of any kind in connection with the making
- 26 or collecting of a small loan.
- 27 (l) **Except as provided in section 402(8)(a)(ii) of this chapter,**
- 28 **entering into a renewal with a borrower.**
- 29 SECTION 22. IC 24-4.5-7-413, AS AMENDED BY P.L.216-2013,
- 30 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 31 JULY 1, 2016]: Sec. 413. (1) A person engaged in making ~~small~~ loans
- 32 under this chapter **(including small loans or long term small loans,**
- 33 **or both)** shall post a bond to the department in the amount of fifty
- 34 thousand dollars (\$50,000) for each location where ~~small~~ loans **under**
- 35 **this chapter** will be made, up to a maximum bond in an amount
- 36 determined by the director.
- 37 (2) A surety bond issued under this section must:
- 38 (a) provide coverage for a lender engaged in making ~~small~~ loans
- 39 under this chapter in an amount as prescribed in subsection (1);
- 40 (b) be in a form prescribed by the director;
- 41 (c) be in effect during the term of the lender's license under this
- 42 chapter;



(d) remain in effect during the two (2) years after the lender ceases offering financial services to individuals in Indiana;

(e) be payable to the department for the benefit of:

(i) the state; and

(ii) individuals who reside in Indiana when they agree to receive financial services from the lender;

(f) be issued by a bonding, surety, or insurance company authorized to do business in Indiana and rated at least "A-" by at least one (1) nationally recognized investment rating service; and

(g) have payment conditioned upon the lender's or any of the lender's employees' or agents' noncompliance with or violation of this article or other applicable federal or state laws or regulations.

(3) The director may adopt rules or guidance documents with respect to the requirements for a surety bond as necessary to accomplish the purposes of this chapter.

(4) If the principal amount of a surety bond required under this section is reduced by payment of a claim or judgment, the lender for whom the bond is issued shall immediately notify the director of the reduction and, not later than thirty (30) days after notice by the director, file a new or an additional surety bond in an amount set by the director. The amount of the new or additional bond set by the director must be at least the amount of the bond before payment of the claim or judgment.

(5) If for any reason a surety terminates a bond issued under this section, the lender shall immediately notify the department and file a new surety bond in an amount as prescribed in subsection (1).

(6) Cancellation of a surety bond issued under this section does not affect any liability incurred or accrued during the period when the surety bond was in effect.

(7) The director may obtain satisfaction from a surety bond issued under this section if the director incurs expenses, issues a final order, or recovers a final judgment under this chapter.

(8) Notices required under this section must be in writing and delivered by certified mail, return receipt requested and postage prepaid, or by overnight delivery using a nationally recognized carrier.

